

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON

JOESEPH SOUTHWELL and JERRY BLAND,

Plaintiffs,

vs.

MORTGAGE INVESTORS CORPORATION
OF OHIO, INC., an Ohio corporation, also
doing business as MORTGAGE INVESTORS
CORPORATION; AMERIGROUP
MORTGAGE CORPORATION; VETERANS
INFORMATION DEPARTMENT; and
VETERANS HOME LOANS

Defendants.

NO. 2:13-cv-01289 MJP

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

For their Joint Status Report to this Court, the parties report as follows:

1. Nature and Complexity of Case. This is an action brought on behalf of Plaintiffs individually and a proposed class of similarly situated consumers alleging Defendant's continual and repeated violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 (c), 47 C.F.R. § 64.1200 (c)-(f) and RCW 80.36.390 by placing and/or knowingly permitting the placement of telephone calls to persons for purposes of commercial solicitation in order to encourage them to obtain loans from Defendant, when such persons had registered their telephone numbers on the National Do-Not-Call Registry and/or

after they had requested that Defendant and its agents stop calling them. Plaintiffs do not believe it will be particularly complex given the statutory claims at issue.

This action was originally filed in state court and was removed by Defendant to this Court. Plaintiffs filed an amended class action complaint on August 15, 2013. Defendant has not yet answered and has filed a motion to dismiss. Defendant denies Plaintiffs' claims and allegations, and denies that class treatment is appropriate.

2. Proposed Deadline for Joining Additional Parties. Plaintiffs believe the deadline should be sixty (60) days after this Court rules on Plaintiffs' motion for class certification. Defendant contends the deadline should be October 3, 2013.

3. Consent to Assignment of This Case to Magistrate Judge. No.

4. Proposed Discovery Plan.

A. The parties exchanged their FRCP 26(a) initial disclosures on August 27, 2013.

B. Subjects of Discovery. Plaintiffs will seek discovery to enable them to file a motion for class certification and to establish liability.

Defendant anticipates seeking discovery regarding the nature and extent of Plaintiffs' claims as well as discovery designed to demonstrate that this matter is not appropriate for class treatment.

C. Electronically-Stored Information. The parties have discussed electronically stored information ("ESI") issues and have agreed to confer further regarding the type, nature, and form of production of ESI. The parties agree that production of electronic data be in single or multi-page TIFF images with extracted text files or OCR text files with a corresponding load file. Spreadsheets or other spreadsheet files and database files are to be

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produced as 1 page Bates numbered TIFF image placeholders with a corresponding native file.

D. Privilege Issues. No such issues have been identified at this time.

E. Limitations on Discovery. At this time, the parties agree that no changes should be made to the Federal and Local Civil Rules regarding discovery. However, the parties reserve the right to seek leave of court to exceed the limitations on discovery imposed by those rules.

F. Need for Discovery Related Orders. The parties agree that, at this time, no additional orders should be entered by the Court pursuant to Rule 26(c) or Local Rule 16(c). The parties agree that, for purposes of service and computation of response deadlines under the Local Rules, filing by ECF will constitute service by hand on the date ECF automated notification is sent. The parties agree to e-mail service of all other documents, including discovery requests and responses, as governed by Federal Rules of Civil Procedure 5 and 6.

5. Local Civil Rule 26(f)(1) Items

(A) Prompt Case Resolution. Plaintiffs believe early mediation is appropriate. Defendant believes private mediation is appropriate after discovery has been completed.

(B) Alternative Dispute Resolution: Plaintiffs propose to use a neutral mediator. Defendant believes private mediation between parties' and their counsel is also appropriate.

(C) Related Cases: *Mahoney v. Mortgage Investors Corporation*, Case No. 1:13-cv-00703 (M.D.N.C.); *Alan Wingate Elam, Jr v. Mortgage Investors Corporation*, 13-cvs-1571 (N.C. Gen. Ct. of Justice).

(D) Discovery Management. The parties believe they can and will manage discovery cooperatively and efficiently.

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(E) Anticipated Discovery Sought. Plaintiffs will propound written discovery and schedule depositions in order to obtain the necessary information to request class certification and to establish liability. Defendant will propound written discovery and conduct depositions regarding the nature and extent of Plaintiffs' claims and to demonstrate that this matter is not appropriate for class treatment. Defendants will seek discovery on subjects including, but not limited to, communications between plaintiffs and defendant, communications regarding defendant, any telephone calls allegedly received from defendant, alleged listing on do-not-call registries, communications regarding requests regarding mortgage credit products, and any alleged damages.

(F) Phasing Motions. Plaintiffs believe that their motion for class certification should be heard first. Defendant believes that dispositive motions relating to the individual plaintiffs' claims may be heard prior to class certification. The parties' proposals for briefing on class certification are as follows:

Event	Plaintiffs' Proposed Deadlines	Defendant's Proposed Deadlines
Class Certification Motion	January 16, 2014	January 16, 2014
Response to Class Certification Motion	February 10, 2014	February 3, 2014
Reply Regarding Class Certification	February 28, 2014	February 7, 2014
Proposed Hearing Date	To be determined by the Court	
Parties file Joint Status Report with Proposed Case Management Schedule and Trial Date	15 calendar days after the Court rules on class certification.	

(G) Preserving Discoverable Information. The parties are preserving discoverable information.

(H) Privilege Issues: None have been identified at this time.

(I) Model Protocol for Discovery of ESI. Plaintiffs and Defendant believe some changes are necessary to the Model Protocol for Discovery of ESI.

(J) Alternative to Model Protocol. Plaintiffs and Defendant are finalizing a stipulation for Discovery of ESI which they anticipate will be filed by Friday, September 6, 2013.

6. Completion Date of Discovery. Plaintiffs believe that discovery can be completed within 120 days after the Court rules on Class Certification. Defendant believes discovery can be completed within 90 days after the Court rules on Class Certification.

7. Bifurcation of Trial. The parties agree bifurcation is not necessary.

8. Pretrial Statements and Pretrial Order. Plaintiffs believe that the pretrial statements and pretrial order called for by Local Rules CR 16(e), (h), and (l) and 16.1 should be dispensed with in whole. Defendant believes the pretrial statements and pretrial order called for by the Local Rules should not be dispensed with.

9. Individualized Trial Program. The parties do not intend to utilize the Individual Trial Program.

10. Suggestions for Shortening or Simplifying the Case. The parties agree that the parties should submit a new Joint Status Report addressing trial and trial-related issues and deadlines no later than 15 days after the Court's ruling on class certification.

11. Trial Readiness Date. The parties agree that trial scheduling should be deferred until this Court rules on Plaintiffs' motion for class certification.

12. Jury/Non Jury-Trial. There is no jury demand.

13. Length of Trial. Plaintiffs believe that trial scheduling should be deferred until this Court rules on Plaintiffs' motion for class certification. Plaintiffs believe the case will take one day to try if a class is not certified and 5 days if a class is certified. Defendant estimates that the case will take approximately 5 days to try.

14. Contact Information for All Trial Counsel.

Attorneys for Plaintiffs:

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15. Scheduling Difficulties for Trial. None at this time.
16. Statement of Service. Mortgage Investors Corporation has been served.

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17. Need for Scheduling Conference. The parties agree that a scheduling conference is not necessary at this time.

18. Disclosure Statement. Mortgage Investors Corporation filed its disclosure statement pursuant to FRCP 7.1 and Local Civil Rule 7.1 on July 25, 2013 (Dkt. #11).

DATED: September 3, 2013

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Attorneys for Plaintiffs and the Class

Attorneys for Defendant

Certificate of Service

I, Rob Williamson, hereby certify that on September 3, 2013, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record who receive CM/ECF notification, and that the remaining parties shall be served in accordance with the Federal Rules of Civil Procedure.

Dated: September 3, 2013

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